

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 7057 of 1995

with

SP.C.A. 7058, 7060 & 7061 of 1995

For Approval and Signature:

Hon'ble MR.JUSTICE M.S.PARIKH

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

RANJISNH PRABHATSINH RATHWA

Versus

DISTRICT PRIMARY EDUCATION OFFICER

Appearance:

MR RD DAVE for Petitioner
MR RA MISHRA for Respondent No. 1
SERVED for Respondent No. 2
MR.M.R.ANAND, GP WITH
MR DA BAMBHANIA for Respondent No. 3

CORAM : MR.JUSTICE M.S.PARIKH

Date of decision: 27/02/96

ORAL COMMON JUDGEMENT

In the matters where only notice is issued, Rule
is hereby issued and service of Rule is waived by

Mr.M.R.Anand, ld. G.P. as instructed by Mr.D.A.Bambhania, learned Government Solicitor for the Tribunal and Mr.R.A.Mishra, learned Advocate appearing for District Primary Education Officer.

2. By consent of the learned Advocate and the learned G.P. as instructed by the learned Government Solicitor all these matters are heard and disposed of by this common judgment.

3. In all these matters where at this stage there are no charges of forgery and/or using bogus or forged mark-sheets or certificates resulting in investigation by the police in that respect and disclosure of the names of the concerned persons the orders passed by the Primary Education Tribunal established under the Bombay Primary Education Act, 1947 are brought under challenge. What the learned members of the Tribunal did was to reject the appeals without affording opportunity to the concerned appellants either being represented by the Advocates or being heard in respect of the charges pursuant to which they were discharged/dismissed from service as primary Teachers.

4. It is not in dispute that the appeals were filed by the appellants as represented by their learned Advocates. However, the District Primary Education Officer issued notices of hearing on behalf of the Tribunal stating in the notice that the appellants should appear personally while mentioning in the notice that there is no provision to engage advocate or another person to appear on behalf of the appellants. It is also submitted on behalf of the appellants that no effective hearing was given to the appellants in respect of the individual charges on which the concerned appellants were discharged/dismissed from service.

5. In reply Mr. Mishra, learned Advocate appearing for the concerned District Education Officer submitted that although there is no provision for permitting the appellants to be represented by advocate, at best the matters could be remanded before the learned Tribunal so as to enable the Tribunal to decide the matters in accordance with law.

6. Having heard the learned Advocate for the parties and the learned G.P. as instructed by the learned Government Solicitor, I am of the opinion that the appeals should be decided after giving proper and effective hearing to the appellants and after permitting the appellants to engage advocates, if they want to

engage advocates, bearing in mind the fact that the grounds on which the appellants have been discharged/dismissed involve questions particularly those of facts comprising the charges.

7. In the result bearing in mind the facts of the case, following directions are issued :-

The impugned orders of dismissal of the respective appeals of the appellants are hereby quashed and set aside and the matters are remanded to the appellate forum for being dealt with, heard and decided in accordance with law bearing in mind the observations made hereinabove. Those appellants, who seek permission to be represented by the Advocates shall be permitted to be so represented. However, it is clarified that no adjournments should be granted except for dealing with the stages of the proceedings of the appeals as they arise.

While hearing and deciding the appeals the Tribunal may, if thought proper and necessary in a given individual case, permit the parties to adduce evidence.

The Tribunal hearing the appeals shall hear and decide the appeals as expeditiously as possible preferably within six months from the date of receipt of this direction.

Rule made absolute only to the aforesaid extent.
No order as to costs.

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